

No. 16592 ✓

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

RICHARD H. CLINTON,

Appellant,

vs.

JOSHUA HENDY CORPORATION,

Appellee.

APPELLEE'S BRIEF.

ROBERT SIKES,

3424 Wilshire Boulevard,
Los Angeles 5, California,

Attorney for This Appellee.

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Statement of the Case.

The appellant filed a libel in admiralty against the appellee in the United States District Court for the Southern District of California in action number 19061-WM. In the eighth "cause of action" therein the appellant alleged that the Joshua Hendy Corporation, acting through its chief mate, had caused the International Organization of Masters, Mates and Pilots to breach its contract with the appellant by suspending and then expelling him from such union.

In the answer filed on behalf of the appellee, the fourth separate defense to the eighth cause of action was that the Court sitting in admiralty did not have jurisdiction of the action as it was for a non-maritime tort.

On January 11, 1956, the District Court of (The Honorable William C. Mathes) dismissed the eighth cause of action on the ground that the alleged tort was not a maritime tort and thus was not within the admiralty jurisdiction of the court.

This order of the court dismissing the eighth cause of action was appealed to United States Court of Appeals for the Ninth Circuit in action number 15056 entitled Richard H. Clinton v. International Organization etc. The lower court order dismissing the action was affirmed, the Court of Appeals holding that the lower court had no jurisdiction over the matter.

The appellant moved the Court of Appeals in said appeal No. 15056 to amend the libel so as to cure a jurisdictional defect but such motion was denied by the Court of Appeals on October 18, 1958.

The libelant then on July 29, 1959, moved the District Court for an order amending the order of dismissal of the action. This motion was denied by the District Court on July 31, 1959, whereupon the libelant began the present appeal to the Court of Appeals on August 7, 1959.

Argument.

Under the Admiralty Rules the matter of amending a pleading as to substance is within the discretion of the District Court.

ADMIRALTY RULE NO. 23.

The District Court denied the appellant's motion to amend and such was within the discretion of the Court.

There is no showing in the appellant's proposed second amended libel that his alleged cause of action is a maritime tort within the admiralty jurisdiction of the court.

There is no allegation as to where the breach of the contract between the union (International Organization of Masters, Mates and Pilots) and the appellant took place. On page 16 of the transcript of record it appears that the appellant was expelled from membership in the union, which was the source of his alleged damage, at a "trial committee hearing." The location of the same is not set forth in the proposed second amended libel.

Further, the minute order of the District Court entered July 31, 1959 [Tr. of R. p. 22] was in order for the reason that the proposed second amended libel does not state a cause of action against the appellee which was one of the special defenses entered in the appellee's answer to the original libel [Tr. of R. p. 7].

The only allegation of the effect of the allegedly defamatory letter sent by the officer of the vessel was that it "caused the International Organization, *et al.*, to bring charges against the libelant's Full Book Membership of said maritime union" [Tr. of R. p. 16]. The proposed second amended libel does not allege anywhere that the "defamatory" letter was the cause of the libelant being found guilty as charged of his violation of his obligation to his union. The libelant alleges that he was found guilty as charged when he was tried by a trial committee of the union [Tr. of R. p. 16] but there is no evidence as to whether the finding of the trial committee was based on the testimony of witnesses, other documentary evidence or upon what evidence at all. Accordingly, it is respectfully submitted that the proposed second amended libel did not state a cause of action as it failed to show that the allegedly defamatory letter was the proximate cause of the appellant's expulsion from his union which is, of course, the entire basis of his alleged damages.

Conclusion.

It is respectfully submitted that the action of the District Court in dismissing the libelant's motion for an amendment to the order dismissing the libel and the District Court's refusal to allow the proposed second amended libel to be filed should be approved and affirmed for the following two reasons:

1. The action being one for a non-maritime tort, there is no admiralty jurisdiction here.
2. The proposed second amended libel did not state a cause of action against appellee as there was no causal connection between the allegedly defamatory letter and the expulsion of the appellant from his union.

Respectfully submitted,

ROBERT SIKES,

*Proctor for Appellee, Joshua
Hendy Corporation.*